

**AMENDED LICENSE AGREEMENT
FOR PRIVATE IMPROVEMENTS IN THE COUNTY RIGHT-OF-WAY
For LOT 2, GRANT SUBDIVISION, FILING NO. 1**

This Amended License Agreement for Private Improvements in the County Right-of-Way ("Agreement") is entered into and made effective this 8th day of MAY, 2018, by and between **Smith Creek, LLC, a Colorado limited liability company,** whose mailing address is P.O. Box 1168, Monument, CO 80132, and **Clive S. Grant and Karen L. Grant, Co-Trustees of the Clive and Karen Grant Revocable Trust Dated October 20, 2015,** whose mailing address is 1315 Walsen Rd, Colorado Springs, CO 80921, the contract purchaser and owner, respectively, of Lot 2, Grant Subdivision, Filing No. 1 (the "Licensees") and **EL PASO COUNTY BY AND THROUGH THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO,** a political subdivision of the State of Colorado, whose street address is 200 S. Cascade Avenue, Suite 100, Colorado Springs, CO 80903 (the "County" or the "Licensor"). The Licensees and Licensor may also be referred to generally as a "Party" and collectively as the "Parties."

Recitals

WHEREAS, pursuant to Section 43-2-147(1)(a), Colorado Revised Statutes (C.R.S.), the County is authorized to regulate vehicular access to or from any public highway under its jurisdiction from or to property adjoining said public highway in order to protect the public health, safety, and welfare, to maintain smooth traffic flow, to maintain highway right-of-way drainage, and to protect the functional level of public highways; and

WHEREAS, Clive and Karen Grant, as individuals, entered into that License Agreement as Licensees with Licensor dated March 14, 2018, recorded on April 9, 2018, at Reception No. 218039666 of the records of the El Paso County Clerk and Recorder's Office ("Original License"), in which Clive and Karen Grant were identified as owners of both Lots 1 and 2 of Grant Subdivision, Filing No. 1. Clive S. Grant and Karen L. Grant, Co-Trustees of the Clive and Karen Grant Revocable Trust Dated October 20, 2015, are the owners of Lot 1 and Lot 2 and are conveying Lot 2 to Licensee Smith Creek, LLC. Because the Original License prohibits transfer of the License without the County's consent, it is necessary to amend the Original License to create two (2) separate Amended License Agreements—one for the owner of Lot 1 and one for the owner and contract purchaser of Lot 2—and to give the County's consent to transferring the License; and

WHEREAS, this Agreement conveys a License to the Licensees and hereby supersedes and replaces in its entirety the Original License; and

WHEREAS, Licensees are the contract purchaser and owners of certain real property located in El Paso County, Colorado, legally described as follows (the "Property"):

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El Paso County, CO



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Lot 2, Grant Subdivision, Filing No. 1 located in the Southwest one-quarter of the Northwest one-quarter of Section 5, Township 12 South, Range 66 West of the Sixth Principal Meridian, County of El Paso, State of Colorado; and

WHEREAS, the County owns and maintains the public right-of-way known as Walsen Road adjacent to the Property; and

WHEREAS, Licensees desire to obtain access from Walsen Road to the Property and use the Licensors right-of-way for the following purposes: installation of private driveway improvements ("Improvements") and maintenance and repair of same within the Licensors right-of-way; and

WHEREAS, the County agreed to grant the Original License to accommodate the driveway that provides access into Grant Subdivision, which driveway had been constructed in the County right-of-way without obtaining prior approval of the County; and

WHEREAS, the Licensees are required to obtain all necessary permits and pay any permit fees prior to performing any work in the Licensors right-of-way; and

WHEREAS, the Licensors, as a convenience to the Licensees, consents to allow the Licensees to use a portion of its right-of-way for the purposes of constructing, maintaining and repairing the Improvements.

NOW, THEREFORE, in consideration of the mutual benefits and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Agreement

1. **Incorporation.** The Parties incorporate the above recitals into this Agreement.
2. **Description and Use of the Licensed Premises.** Licensors hereby grants to Licensees a nonexclusive License upon those portions of the Licensors-owned right-of-way known as Walsen Road generally illustrated in **Exhibit A**, attached hereto, which shaded area depicted on Exhibit A shall be hereinafter referred to as the "Licensed Premises." The License is granted to Licensees to construct, install, maintain and repair the Improvements within the Licensed Premises. Such maintenance and repair shall be done in accordance with applicable laws and County regulations and shall include snow removal within the Licensed Premises. As this Agreement only creates a License, each Parties' rights and obligations stated hereunder are exclusively contractual. Thus, each Party agrees and understands that this Agreement does not create any type of real estate interest of any kind or nature or any type of possessory estate or possessory interest in the Licensed Premises and does not run with the land. The entire Licensed Premises shall be for the use of Licensees, their employees, agents, servants and invitees for any lawful purposes associated with the construction, use, and maintenance of

the Improvements, and related purposes for the benefit of the Licensee and the Property. Licensees agree that their use of the Licensed Premises is nonexclusive in that Licensors will also grant, by separate Amended License Agreement, a License in the Licensed Premises to the owner of Lot 1, Grant Subdivision, Filing No. 1; Licensors may grant additional Licenses for public purposes in the Licensed Premises; and the public will continue to have the right to use the public right-of-way that is located within the Licensed Premises.

3. Installation of Improvements. All construction shall be performed in a good and workmanlike manner and in accordance with applicable County standards, rules, and regulations governing such construction, as determined by El Paso County Planning and Community Development Department and El Paso County Department of Public Works.

4. Term and Commencement of Use. The License shall commence on the date first written above, hereinafter referred to as the Commencement Date, and it shall continue until the Licensors requires the Licensed Premises for other public purposes, or unless sooner terminated in whole or in part by the Licensors as more fully set forth in this **Paragraph 4** and in **Paragraph 6** below.

The rights and obligations, under this Amended License Agreement for Lot 2, of the Clive and Karen Grant Revocable Trust Dated October 20, 2015 shall terminate, and those of Smith Creek, LLC shall commence, upon conveyance of the Property by executed deed without the need for further action by any Party. Licensees have the joint and several obligation to provide a copy of such deed within fourteen (14) days of execution to the El Paso County Engineer at 3275 Akers Drive, Colorado Springs, CO 80922.

5. Additional License Terms:

a. Utilities. Licensees are responsible to ensure no damage occurs to existing utility and other installations that may be present on the right of way during installation, construction or repair of the Improvements. Licensors reserves the right to issue Work in the Right of Way Permits allowing installation of utilities in the Licensors' public right of way. Licensees shall not interfere with these installations, which will take precedence over any Improvements, now in place or installed in the future. If any utility installation damages all or any portion of the permitted Improvements within the Licensed Area, Licensors shall have no liability to Licensees for such damages.

b. Damage. Licensees are responsible for reimbursing Licensors for the repair of any damage to fences, signs, delineators, guardrails, landscape plantings of the Licensors, or any other right of way improvements resulting from the Licensees' operations. Licensees shall hold Licensors, its elected officials, appointees, officers, and employees free and harmless from all risk of injury or damage to Licensees, property of Licensees, and Licensees' agents, employees, assigns and successors or others which may result from debris, foreign objects, or chemical contamination resulting from normal maintenance activities performed by Licensors. Licensees are responsible for reimbursing Licensors for the repair and re-survey of any damage and disturbance to any survey monuments resulting from activities within the Licensed Premises by the Licensees.

c. Licensor's Need for Right of Way. Licensor will not replace or relocate any Improvements placed within the public right of way or the Licensed Premises if Licensor has to remove Improvements, in whole or in part, for any reason including, but not limited to: safety, maintenance, or construction. At the time Licensor's construction or maintenance operations begin, this License will be suspended. The License may be reinstated for the remaining term upon completion of the construction.

d. Work in the Right of Way Permit. Prior to any construction, operation, and/or landscaping activities within the Licensed Premises, Licensees shall obtain a Work in the Right of Way Permit from the El Paso County Department of Public Works in accordance with the El Paso County Engineering Criteria Manual.

e. Maintenance. As the Improvements will be a part Licensor's public right of way, Licensees are expected to maintain the Improvements in an acceptable manner. Upon notice of any deficiency in the Improvements, either: a) by Licensor; or b) by its own observation; or c) by any other means, the Licensee shall take action as soon as possible, but not later than fifteen (15) working days after the mailing date of written notice from Licensor to correct the deficiency and to protect the safety of the traveling public. In the event Licensees, for any reason, do not or cannot correct the deficiency within fifteen (15) working days of written notice as contemplated above, or demonstrate that action satisfactory to cure such default has been commenced and will be completed in a timely manner, or otherwise demonstrated that no deficiency exists, Licensor reserves the right to correct the deficiency and to bill the Licensee for such work. Licensee shall pay any such bill within thirty (30) days after receipt. Under these circumstances, Licensor shall only correct the deficiency to the extent it affects use of the right of way and/or the public's health, safety, and welfare.

f. Natural Disasters. Licensor shall not be liable to Licensees in the event of an emergency, such as a fire, flood, or other natural cause that damages the Licensed Premises or the Improvements. In the event the Licensed Premises are damaged due to such an emergency, natural cause, or natural disaster, it shall be the sole responsibility and cost of Licensees to return the Licensed Premises to its original condition.

6. Termination:

a. Termination by Licensor. Licensor at any time and 1) for any valid public purpose, as determined at Licensor's sole discretion, or 2) upon violation of any term of the License by Licensees, shall be entitled to terminate the License on all or part of the Licensed Premises by giving at least 30 days' prior written notice to Licensees. In addition, the El Paso County Engineer shall have the authority to immediately terminate the License on all or part of the Licensed Premises if he or she determines that the public health, safety or welfare is adversely affected by the License. Upon such termination, Licensor may direct Licensees to remove all or a portion of the Improvements from the Licensed Premises at Licensees' sole expense, and the Licensees shall restore the Licensed Premises to its original condition to the extent reasonably practicable, ordinary wear and tear excepted.

b. Termination by Licensee. Licensees at any time shall be entitled to terminate the License on all or part of the Licensed Premises by giving at least 30 days' prior written notice to Licensor. Upon termination by the Licensees of the License on all or part of the Licensed Premises, and if requested by Licensor, the Licensees shall remove the Improvements within the 30-day notice period at its own expense and restore the Licensed Premises to its original condition to the extent reasonably practicable, ordinary wear and tear excepted.

c. Effect of Termination. Upon termination of the License on all or part of the Licensed Premises by either Party, Licensees shall not be entitled to the payment of any compensation or just compensation under any cause of action at law or in equity for the retaking of the Licensed Premises or removal or relocation of the Improvements. If the License is terminated on only a portion of the Licensed Premises, Licensor and Licensees shall retain their respective rights and obligations under this Agreement with respect to the remaining portions of the Licensed Premises, and Licensees shall not have any further rights or obligations with respect to any part of the Licensed Premises for which the License has been terminated.

7. Condition of the Licensed Premises, Obligation to Make Repairs, Obligation to Remain in Compliance with Laws. The Licensees agree and understand that they commence use of the Licensed Premises in an "AS IS" condition and without any warranties of any kind or nature. It shall be the Licensees' sole obligation to maintain and make any necessary repairs to the Licensed Premises, and to maintain and repair the Licensed Premises in full compliance with the requirements of the Department of Public Works, or as otherwise required by the El Paso County Land Development Code, as amended, revised, or replaced, and any and all other applicable state, federal, or local laws, regulations, and ordinances.

8. Indemnification/Hold Harmless. Licensees shall indemnify and hold the Licensor and its heirs, successors and/or assigns harmless from and against any and all damages, losses, costs, expenses and liabilities of any kind or nature as a result of, or in connection with Licensees', their contractors', agents', consultants' and/or employees' failure to comply with the terms of this Agreement or failure to maintain the Licensed Premises in a safe condition, and for use of the Licensed Premises, but only to the extent such damages, losses, costs, expenses, and liabilities are due to or arising from Licensees' negligence or willful misconduct, but not as to use by the general public. Nothing in this section shall be deemed to waive or otherwise limit the defense available to Licensor pursuant to the Colorado Governmental Immunity Act, §§24-10-101, C.R.S., *et seq.* or as otherwise provided by law.

9. Compliance with Fire/Rescue Protection District Standards. The Improvements are subject to all applicable standards of the local Fire / Rescue Protection District to enable the provision of fire protection and emergency response to the Property.

10. Assignment. Licensees shall not assign or otherwise transfer this License or Agreement or any right or obligation hereunder without the prior written consent of the Licensor, which shall not be unreasonably withheld, conditioned or delayed. Should the Licensor agree to such assignment, Licensor and Licensees hereby expressly agree that the intent of such

Agreement. Additionally, any amendment, termination, deletion, addition to, or modification of this Agreement must be recorded in the records of El Paso County, Colorado.

21. No Third Party Beneficiaries. This Agreement does not and shall not be deemed to confer on any third party, except for the Licensees' Contractors, Consultants, Employees, and Agents, the right to the performance of this Agreement, to claim any damages or to bring any legal action or other proceeding against the Licensees or Licensor.

22. Severability. If any paragraph, section, subsection, clause or phrase of this Agreement is for any reason held to be invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement.

23. Waiver. The waiver of a breach of any of the provisions of this agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or other provision of this Agreement.

Done the day and year first written above.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

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LICENSOR:

**BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO**

By: 
Darryl Glenn, President

ATTEST:


Chuck Broerman 18-207A
County Clerk & Recorder

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 22 day of May, 2018, by Darryl Glenn as President of the Board of County Commissioners of the County of El Paso, State of Colorado.

WITNESS my hand and official seal.

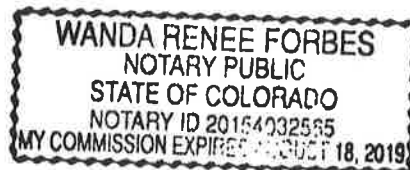
My Commission Expires: Aug. 18, 2019


Notary Public

APPROVED AS TO FORM:

**OFFICE OF THE COUNTY ATTORNEY
OF EL PASO COUNTY, COLORADO**

By: 
Assistant County Attorney



Smith Creek, LLC, a Colorado limited liability company

By: Mary Beasley

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

Witness my hand and official seal.

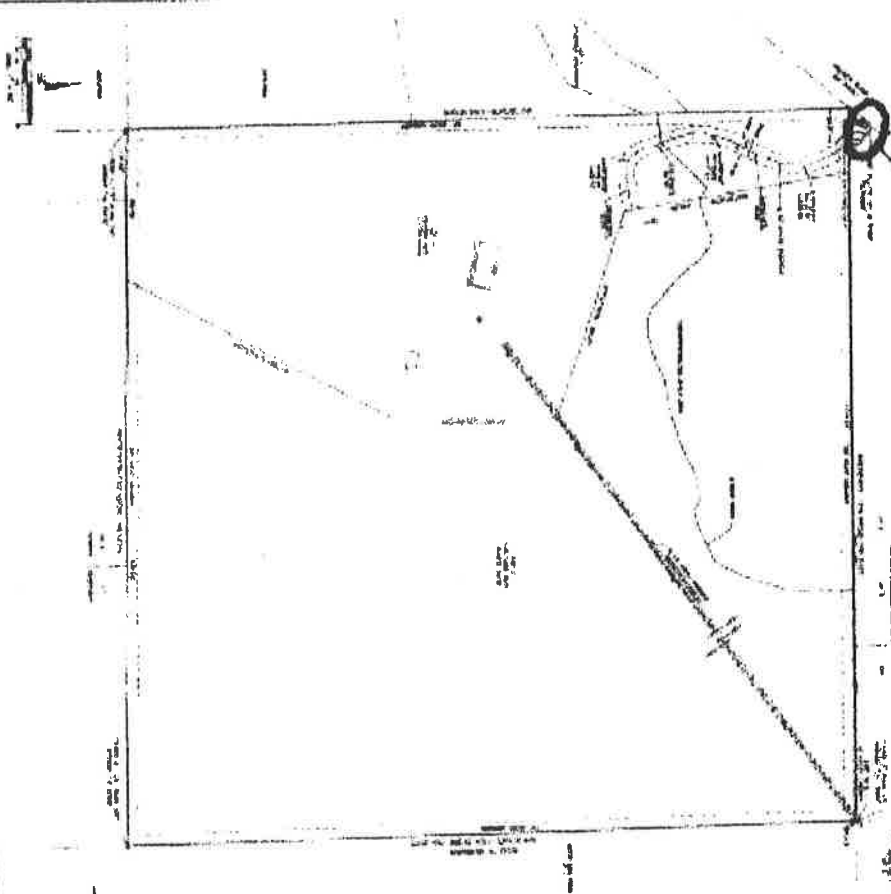
My commission expires: February 26, 2019

THOMAS COLE ANDREAS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20154008270
MY COMMISSION EXPIRES FEBRUARY 28, 2019

Notary Public

EXHIBIT A

Short paved section connecting Waldsen Rd to cur driveway



GRANT SUBDIVISION

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